

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

R. MICHAEL KENNEDY-CHUEY,

Plaintiff,

v. // CIVIL ACTION NO. 1:13CV271
(Judge Keeley)

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS;
DANIEL A. DURBIN,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. NO. 13)
AND DISMISSING WITHOUT PREJUDICE THE COMPLAINT (DKT. NO. 1)

On December 27, 2013, pro se plaintiff R. Michael Kennedy-Chuey ("Kennedy-Chuey") filed a complaint naming as defendants the West Virginia University Board of Governors and Daniel A. Durbin (Dkt. No. 1). Kennedy-Chuey did not serve the complaint on the defendants within 120 days, as required by Federal Rule of Civil Procedure 4(m). The Court referred the matter to Magistrate Judge John Kaull, who issued an order to show cause on April 29, 2014 (Dkt. No. 11).

Kennedy-Chuey did not respond to the order to show cause, and the copy mailed to him was returned as undeliverable and unclaimed on May 27, 2014 (Dkt. No. 12). On May 29, 2014, Magistrate Judge Kaull issued a report and recommendation ("R&R") recommending that Kennedy-Chuey's complaint be dismissed without prejudice for failure to prosecute (Dkt. No. 13). Kennedy-Chuey did not file any objections to the R&R.

**ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. NO. 13)
AND DISMISSING WITHOUT PREJUDICE THE COMPLAINT (DKT. NO. 1)**

When reviewing a magistrate judge's R&R pursuant to 28 U.S.C. § 636, the court reviews de novo only that portion of the R&R to which a timely objection has been made. 28 U.S.C. § 636(b)(1)(C). It will uphold those portions of a recommendation as to which no objection has been made unless they are "clearly erroneous." See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). Because Kennedy-Chuey did not file any objections to the R&R, the Court will review the R&R for clear error.

Under Rule 4(m), "[i]f a defendant is not served within 120 days after the complaint is filed, the court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. Pro. 4(m). If the plaintiff shows good cause for his failure to serve the complaint, the court "must extend the time for service for an appropriate period." Id.

Kennedy-Chuey filed his complaint on December 27, 2013 (Dkt. No. 1), and his deadline to effect service expired on April 28, 2014. Moreover, he has not responded to Magistrate Judge Kaull's order to show cause (Dkt. No. 11) or the R&R (Dkt. No. 13).

**ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. NO. 13)
AND DISMISSING WITHOUT PREJUDICE THE COMPLAINT (DKT. NO. 1)**

Therefore, the Court **ADOPTS** the R&R (Dkt. No. 11) and **DISMISSES WITHOUT PREJUDICE** the complaint (Dkt. No. 1).

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and the pro se plaintiff, certified mail, return receipt requested. The Clerk is further instructed to enter a separate judgment order.

DATED: November 21, 2014.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE